

**January 26, 2007**

**DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY**

**Appeal**

Name of Petitioner: Fred R. McCarroll

Date of Filing: January 18, 2007

Case Number: TFA-0186

This Decision concerns an Appeal that Fred R. McCarroll filed in response to a determination that was issued to him by the Department of Energy's (DOE) Oak Ridge Operations Office (hereinafter referred to as "Oak Ridge"). In that determination, Oak Ridge replied to a request for documents that Mr. McCarroll submitted under the Privacy Act (PA), 5 U.S.C. § 552a, as implemented by the Department of Energy (DOE) in 10 C.F.R. Part 1008. Oak Ridge informed Mr. McCarroll that its search had failed to identify any documents that were responsive to his request. This Appeal, if granted, would require that we remand this matter to Oak Ridge for another search.

The PA generally requires that each federal agency permit an individual to gain access to information pertaining to him or her which is contained in any system of records maintained by the agency. 5 U.S.C. § 552a(d). The Act defines a "system of records" as "a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual." 5 U.S.C. § 552a(a)(5).

Mr. McCarroll is an employee of BWXT Y-12, which operates the DOE's Y-12 plant in Oak Ridge, Tennessee. In his request, Mr. McCarroll sought copies of records of any psychological evaluations that he has undergone during his tenure at the Y-12 plant. In its determination letter, Oak Ridge informed Mr. McCarroll that it had been unable to locate any such records at any of its facilities. However, Oak Ridge stated that it had forwarded his request to the National Nuclear Security Administration (NNSA) in Albuquerque, which has jurisdiction over the Y-12 plant. Oak Ridge further stated that the NNSA would respond directly to Mr. McCarroll with the results of its search. Determination Letter at 1.

In his Appeal, Mr. McCarroll cites a letter from two psychologists as evidence that the requested records do exist. However, the letter indicates that the records are in the possession of the NNSA. It states, in pertinent part, that "we have recently processed the records request for psychological records which you made on behalf of Mr. Fred R. McCarroll. These records will be sent shortly

*through the NNSA Albuquerque Service Center to you.*" November 28, 2006 letter from Drs. Linda Shissler and Russ Reynolds to William Allen, Counsel for Mr. McCarroll (italics added).

We have often reviewed the adequacy of a search conducted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. A PA request requires only a search of systems of records, rather than a search of all agency records, as is required under the FOIA. Nevertheless, the standard of sufficiency that we demand of a PA search is no less rigorous than that of a FOIA search. Therefore, we will analyze the adequacy of the search conducted by Oak Ridge in the case at hand using principles that we have developed under the FOIA. *See, e.g., Stephen A. Jarvis*, 28 DOE ¶ 80,246 (2002).

We have stated on numerous occasions that a FOIA request deserves a thorough and conscientious search for responsive documents, and we have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Butler, Vines and Babb, P.L.L.C.*, 25 DOE ¶ 80,152 (1995). The FOIA, however, requires that a search be reasonable, not exhaustive. "[T]he standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials." *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord, Weisberg v. Department of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984). The fact that the results of a search do not meet the requester's expectations does not necessarily mean that the search was inadequate. Instead, in evaluating the adequacy of a search, our inquiry generally focuses on the scope of the search that was performed. *Information Focus On Energy*, 26 DOE ¶ 80,240 (1997).

In order to determine whether the search conducted was adequate, we contacted Oak Ridge. We were informed that the request was referred to the local personnel security office, which informed the Oak Ridge analyst assigned to the request that Mr. McCarroll's personnel security file had been transferred to NNSA in Albuquerque and that no psychological records could be found at the local office. Oak Ridge further informed us that Mr. McCarroll's personnel security file, which is currently in the possession of NNSA, is the only place where the requested records are likely to be found. *See* memorandum of January 19, 2007 telephone conversation between Robert Palmer, OHA Staff Attorney, and Amy Rothrock, Oak Ridge. Based on the information before us, we conclude that Oak Ridge's search for responsive documents was adequate, and that Mr. McCarroll's Appeal should therefore be denied. Of course, Mr. McCarroll remains free to appeal NNSA's determination once he receives it, if he does not receive the documents that he seeks.

It Is Therefore Ordered That:

(1) The Privacy Act Appeal filed by Fred R. McCarroll, OHA Case Number TFA-0186, is hereby denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552a(g)(1). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

William M. Schwartz  
Senior FOIA Official  
Office of Hearings and Appeals

Date: January 26, 2007

